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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/266,674	03/11/1999	DEREK JONATHAN HARPER	P-8609	6125

7590

10/01/2002

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EXAMINER

SIRMONS, KEVIN C

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 10/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicant(s)

09/266,674

Applicant(s)

HARPER ET AL.

Examiner

Kevin C. Simons

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-11 and 22-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 23-58 is/are allowed.
- 6) ☒ Claim(s) 1-6,9-11 and 59-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

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**DETAILED ACTION**

Applicant has failed to number the claims properly during prosecution. Therefore, the claims have been re-numbered. The examiner will attempt to examine the claims as best understood.

Furthermore, the examiner will examine the New Claims Numbers Only!

N/A-Applicant did not submit a claim number(s).

Original Claim No.	New Claim No.
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1	1
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2-N/A	
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3	2
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16	15
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Original Claim No.	New Claim No.
17	16
18	17
19	18
20	19
21	20
22	21
23	22
24	23
25	24
26	25
27	26
28	27
29	28
30	29
31	30
32	31
33	32
34	33
35	34
36	35
37	36

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Original Claim No.	New Claim No.
38	37
39	38
40	39
41	40
42	41
43	42
44	43
45	44
46	45
47	46
48-N/A	
49-N/A	
50	47
51	48
52	49
53	50
54	51
55	52
56	53
57	54
58	55

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Original Claim No.	New Claim No.
59	56
60	57
61	58
62	59
63	60
64	61
65	62
66	63
67	64
68	65
69	66
70	67
71	68
72	69
73	70

Note: Applicant has canceled claim 2. Applicant has canceled claim 7, which is now new claim 6. Applicant has canceled claims 13-23, which are now new claims 12-22.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by  
Kashmer et al U.S. Pat. No. 4,465,485.

Kashmer discloses a drip chamber comprising: a rigid tube, the tube having an outer surface and a vent in fluid communication with the tube, the vent having a filter made of expanded polytetrafluoroethylene (ePTFE) (40, 60), wherein the pore size of the filter ranges from greater than .45 um to about 5.0 um (fig. 1), the filter being flush with the outer surface of the tube (fig. 4).

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-6, 8-11 and 59-70 are rejected under 35 U.S.C. 102(e) as being anticipated by  
Bormann et al U.S. Pat. No. 6,336,916.

Bormann discloses a drip chamber comprising: a tube having an outer surface; and a vent in fluid communication with the tube, the vent having a filter made of a porous material wherein

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the pore size of the filter is 3 um (col. 7); as to claims 60-62, (10); as to claim 63, (figs. 8); as to claims 64 and 65, (figs. 1 and 8); as for claim 66-70, (see above rejection).

***Allowable Subject Matter***

Claims 23-58 are allowable over the prior art of record.

***Response to Amendment***

***Drawings***

Applicant has amended the drawing therefore, the objections have been withdrawn.

***Claim Rejections - 35 USC § 112***

Applicant has amended the specification, thus clarifying the claims. Therefore, the rejections have been withdrawn.

***Response to Arguments***

Applicant's arguments filed 6/6/02 have been fully considered but they are not persuasive.

In response to applicant's argument that Kashmer et al is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the office does not regard a 102 rejection as nonanalogous art. Nonanalogous art arguments only apply to 103 rejections.




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In response to applicant's arguments, the recitation a CSF drainage system has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Conclusion***

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kevin C. Sirmons whose telephone number is (703) 306-5410. The examiner can normally be reached on Monday - Thursday from 6:30 am to 4:00 pm. The examiner can also be reached on alternate Fridays.

  
Kevin C. Sirmons  
Patent Examiner  
9/26/02

  
BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700